



Report to the Auburn City Council

Action Item

Agenda Item No. **10**


City Manager's Approval

To: Mayor and City Council Members
From: Rich Ramirez, Interim City Manager
Date: March 10, 2014
Subject: Auburn Airport Lease/ Extension Policy

The Issue

Should the City Council of the City of Auburn establish a clear policy on leases, extensions and the means to calculate terms and conditions including rents?

Recommendation

Review and consider adopting in concept the elements of the attached resolution creating an Interim Lease Policy subject to review by the Economic Development Committee (or equivalent Advisory Committee, Board or Commission). Upon review by the respective Committee, return the Interim Airport Lease Policy for final consideration by the City Council.

Background

Prior to 2013 the City approached airport leases and lease extensions on a case by case basis. Generally, a policy that is based on a case to case basis can lead to complications, such as allegations of favoritism or requiring a longer negotiating period given economic lease parameters are not clearly established. As discussed below, potential leaseholds and best practices seek clarity, consistency in application and stability with respect to negotiating terms and conditions of a lease. To that end, the City in 2013 commenced the preparation of options that might drive the preparation of a "global solution" to the City's lack of an approved City Council adopted Airport Lease Policy. Regrettably, the effort to bring such a policy forwarded stalled (see Exhibit A).

Currently there is renewed potential interest by two to three parties to secure either an Airport Lease or an Airport Extension. Unfortunately, the City is faced with continuing to negotiate leases/extensions on a case-by-case (something not recognized as a "best management practice" in the industry) unless the City adopts a lease policy. Rather than continue this practice, the City could pursue either a "global solution" and create an Airport Lease Policy or it could create an Interim Airport Lease Policy.

Best Practices

Justin Ritter, the City's Airport Engineering Consultant, shared with Staff a copy of, "Summary of Airport Lease Best Practices" (See Exhibit B). The "Best Practices" summary was generated by the Airport Cooperative Research Program (ACRP). ACRP is managed by the Transportation Research Board (TRB) of the National Academies and sponsored by the FAA. The summary provides an excellent review of things that a city may wish

to consider in developing a policy associated with Airport leases including the need to consider the economic development multiplier effects associated with a given lease.

Lease policies can be fairly detailed such as City of Ocala's (See Exhibit C) or they can be brief, as in the case of Redding, CA (See Exhibit D). The key is to have a policy so as to provide a "level playing field for negotiation".

Accordingly, factors that might come into play with respect to creating a lease policy include but are not limited to:

- When should an appraisal be used to establish value for a lease
- When can the City use a multiplier or an inflator to arrive at a new rent
- Should FBO leases have additional conditions over and above a "standard form" lease
- Should leases be tied solely to square footage or should other variables drive rates such as a percentage of value or return on the generated income stream, term and accessory benefits to the airport?
- How should subletting take place and under what conditions?
- What are the best practices related to the reversion of improvements and more fundamentally, does the City desire becoming the "landlord" to the tenants occupying the asset versus the ground-lessor, once the lease reverts to the City
- Will the City pay commissions to brokers
- Is the proposed lease consistent with the Airport Master Plan

The Global Airport Lease Solution

The creation of an Airport Lease Policy could have a number of interested parties desiring to participate in the review of such a policy. A "global solution" could take between four to six months. At the same time, the City has private interests that may desire ground lease extensions and are in the middle of trying to secure financing. Waiting for the City to final a "global" lease policy could at a minimum jeopardize financing of some existing Airport Leasehold customers. Rather than continue to treat such requests on a case by case basis, a process that might inadvertently result in less than ideal lease, a short term policy might be considered by the City Council that would be superseded by the final adoption of the global solution: an Airport Lease Policy.

Interim Airport Lease Policy Options

The Interim Lease Policy would only apply to requests that do not have prior Council approval to proceed with an extension. In other words, the recent leasehold extension of the Miltenyi/Cook Family Trust would not be subject to a new Airport Lease Policy. That said there are at least three potential options the City could pursue with respect to an interim Airport Lease Policy until a City Council approved Airport Leasing Policy is finalized:

Draft Option 1: Temporarily freeze requests for new leases/extensions until a final Airport Leasing Policy is in place. The upside with this option is that the City would not have a "two-step" process: interim and then final Council approved Airport Lease Policy. Instead all parties interested in the subject discussion could weigh into the conversation resulting potentially in a more comprehensive final Airport

Lease Policy avoiding an “interim solution”. The downside would be the potential loss of new leases or financing of those current leaseholds that are in the process of trying to secure improvement financing.

In an effort to accommodate those interests desiring to move forward now and not wait for a formal venting of the final City Council approved Airport Lease Policy, a second option is offered.

Draft Option 2: This option would allow for an extension of a lease based on a five step process:

Procedures for the Extension of Existing Leaseholds

Step 1: The City shall first calculate the “new proposed rent” by adjusting the current rent for inflation (San Francisco-Oakland CPI) from the date of the originally executed lease to the date of the request. For example, a lease executed in 1975 would have the rent calculated by the increase in the rate of inflation from 1975 to 2014.

Step 2: Using an appraiser acceptable to the City Manager, the appraisal will determine the value of the asset or annual cash flow. This value would be multiplied by 6% to arrive at a value or “appraisal rent”.

Step 3: The Interim Airport Lease Policy rent would be the greater of the two values per year, until such time as a new “global” Airport Lease Policy is adopted by the City Council. This new rent would be adjusted annually by the San Francisco-Oakland CPI.

Step 4: In no case shall the rent for an extension of the leasehold be less than the current rent the City is receiving plus 10%: Old Rent \$100 X 10% = \$110.00 new rent.

Step 5: In an effort to cushion the impact of a major rent increase resulting from the above calculation, the rent increase may be phased-in. If the new rent is less than 10% the rent shall not be phased-in and will go into effect upon the execution of the leasehold extension. If the rent increase is more than 10% but less than 20% of the current rent, a three year phase in would occur plus the above annual CPI. If the rent increase is more than 20% but less than 30%, a five year phase-in period would occur plus above annual. If the new rent is over 30%, a ten year phase-in period would occur plus above annual. Regardless, of the phase in period, upon the completion of the phase-in period, a new rent will be determined subject to the then adopted City Council Airport Lease Policy.

New Leaseholds

The rent for new leaseholds will be determined by an appraisal of the proposed use/improvement. Regardless, once the value of the asset or projected cash flow is determined, the rent will be 6% per year of the value of the asset or cash flow whichever is greater. A credit or discount may be granted to the new leasehold for quantifiable economic multiplier effects associated with the new leasehold subject to review and approval by the City Council. These discounts shall be known as “performance indicators”.

Leaseholds under the Interim Airport Lease Policy that fail to meet the performance indicators two years in a row will be required to pay the original calculated rent absent the credits or discounts. Once the City Council adopts a “global Airport Lease Policy solution”, the Leasehold shall be subject to a recalculation of the rent, based on the City’s new Airport Lease replacing the Interim Airport Lease Policy.

Assignments

Assignments under the Interim Airport Lease Policy will be exempt provided there is no modification to the terms and conditions of the existing lease. The exception to this rule would be if the assignor is behind on rent or in violation of other terms of his or her leasehold. If the assignor is behind and back payments or penalties are due, the assignor must bring their lease hold current before such an assignment can occur.

Draft Option 3: Set aside the best practice literature on the subject and continue the practice of negotiating airport leases/extensions on a case-by-case basis until such time as an Airport Lease Policy is adopted by the City Council

Fiscal Impact

The adoption of a new Airport Lease Policy should result in a higher revenue stream to the City, the amount of this increase is not clear at present.

Reverted Lease Extension Options

Auburn Airport and Business Park

(Including Addendum #1)

The City of Auburn is the lease holder of numerous land leases at the Auburn Municipal Airport and inside the Auburn Industrial/Business Part, adjacent the airport. All properties are within the City of Auburn's "City Limits", contain reversion clauses (all improvements become the property of the City at lease termination) and currently have improvements on the leased land ranging from basic aircraft hangars to high-end, commercial-grade, multi-story, office buildings.

Most of the leases currently in-place were originated as either 40 or 50 year ground leases. One large airport lease will be expiring within the next 5 years, with most expiring in the 20-30 year range, several close to 40 years away and one expiring in mid- 2060.

The principal issue in this discussion is the fact that the City will gain ownership of potentially valuable assets at lease termination, assets the lessee is obligated to maintain throughout the term of the lease, per the original lease agreement.

The question.....how to respond to a "lessee" who requests consideration of the City for a lease extension, knowing the lease is reverted and that the lessee will forfeit all ownership rights of the improvements on the leased ground at lease termination, by prior agreement.

Options:

1. It appears the City has generated a lease extension, with one specific lessee (Eccles/Spencer), dating back to 1993. No evidence has been found that any other lease extensions have ever been approved by the City Council at the airport or the adjacent business park. (*Note: See Addendum #1 at the end of this report*)

The extension involved two properties with improvements that included both an aircraft hangar and multiple office-type buildings. The extension was granted within approximately 2 years of the lease "commencement" dates, were for an additional 25 years, which effective created 75-year leases.

The lessee negotiated a cost for the extensions with the City at \$2/sq. ft. for the offices and \$1/sq. ft for the hangar. The lessee was allowed to pay-off this cost over a 15 year period, via increased ground lease monthly payments.

Option #1: Negotiate something similar with potentially starting at a rate that represents the CPI increase from 1993 to 2013.....or whatever date in the future become relevant when a request is made. This rate of increase is approximately 62.5%.

2. Knowing an asset value exists at the time of lease termination and the City would be potentially losing/forgiving the net revenue from ownership of the asset if a lease were extended, generate an agreement that extends the lease but does not forego the revenue potential at the time of the original lease termination.

Example: A lease terminates in 20 years but the lessee desires a 20-year extension, let's say for refinance reasons. A lease is developed that creates a new 40-year lease, has the ground lease rate and conditions for adjustment remain unchanged for the remaining 20 years of the original lease time frame, but that lease rate is modified to a "fair market value" at the start of the second 20-year period, to include the entire assets on the property. The entire assets would include the lessee's improvements, as well as the original ground. That fair market value could be adjusted to include allowances for taxes, maintenance, etc.

Option #2: Modify lease to show change in leased "asset" at termination of original lease. Price new lease payments accordingly at time of lease extension start date.

3. Knowing that all improvements are on leased property and that actual ownership of the improvements is at best a long-term "leasehold" interest, adjust the ground lease payments now to reflect a negotiated value of the entire asset over the life of the requested lease extension. As a starting point on value, initiate an appraisal of the property, to include all assets, to determine revenue potential, if the City were to possess ownership of the property. Adjust for lack of property management, manpower, maintenance, etc. Negotiate adjusted lease rate to end of extended lease date requested.

Option #3: Adjust current (ground) lease rate to reflect improvements prorated over the term of the extended lease time period.

4. Per the original lease agreements, the City is not obligated to do anything with a request for a lease extension. In fact, no mention is made of options regarding lease extensions in any of the leases currently in-force. The vast majority of the obligations for lease performance rest with the lessees.....not the City.

Option #4: Do nothing.

Summary and Opinion:

Ultimately the City needs to determine if they wish to remain as ground "landlords" or become landlords of significant improvements on the aforementioned ground, with even more significant revenue generating potential. The possession and ownership responsibly of these improvements, assuming revenue generation is the desire, includes maintenance needs, insurance, taxes, marketing, etc.....along with the manpower to perform these tasks. At the same time, the City is aware of the fact that the assets are being delivered to them as encumbrance-free.

Whatever is established here will generate precedence. The previous extensions (to one lessee), dating back over 20 years, can probably be discounted considerable from a "precedence establishing" standpoint, in the opinion of this author. That said, I do not believe it can be discounted entirely. Others (staff/advisors) need to weigh-in here.

Finally, due diligence is fundamental here. With an extension, the City is forfeiting the ownership of improvements they are contractual entitled to. Some level of compensation, as has been negotiated at least once within the subject area, needs to be expected by all parties.

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Exhibit B



CHAPTER 6

Summary of Best Practices

Regardless of an airport's size, location, or market, certain best practices prevail and provide a common thread through development projects at airports of all types. The airport sponsor must strive to meet the demands of the airport's users, the needs and desires of the surrounding community, the financial concerns of potential developers, and the regulatory requirements of the FAA, all while ensuring that the current and future financial and operational health of the airport remains intact. This can be a difficult task to accomplish, particularly when these goals may often be seen as being at odds with each other. It is, therefore, imperative that the airport sponsor evaluate the potential financial, economic, and regulatory impacts of the agreement prior to entering into a lease. While it is important to consider the benefits to the community, the developer, and ultimately the tenant in the lease arrangement, it is important to remember that the financial sustainability of the airport is the primary goal. The following sections will review lease and development best practices discussed throughout this *Guidebook*, and provide the airport sponsor with procedures that achieve both the desired development and the necessary sustainability.

6.1 Project Development

The project development phase encompasses all of the planning, collaboration, and decision-making processes that occur prior to the negotiation and execution of the appropriate agreements. For this reason, it is important to focus on setting the groundwork that will be required for a successful relationship that, in turn, will benefit both the airport and the tenant.

6.1.1 Airport Planning

The airport sponsor must have a vision as to how the airport will be developed and those goals must be clearly defined and aligned with those of the community and potential tenants. Using the Airport Master Plan and any land use studies as a starting point, the basis of any potential development project should be evaluated for its desirability and impact on the airport. The Master Plan should define land appropriate for aeronautical and nonaeronautical use, as well as the types of development intended for the respective land uses (such as corporate hangars on land designated for aeronautical use or warehousing for nonaeronautical use). However, the airport will need to maintain flexibility when it comes to its overall vision for future airport development. The demands of the market dictate flexibility on the part of the airport sponsor and will often require deviation and exceptions to the airport's Land Use Plan in order to secure a tenant agreement. (Airport Vision discussion in Section 3.1 provides additional information on this topic).

6.1.2 Stakeholder Engagement

In any development project or lease agreement, the identification and inclusion of all affected stakeholders early in the process is crucial to a successful outcome. An airport sponsor operating in a vacuum may overlook valuable resources or encounter unexpected hurdles if he or she has not actively engaged the stakeholder groups that have vested, or even ancillary, interests in the airport.

Throughout the case study research process, it was evident that economic development agencies or corporations (EDA/EDC), both local and state, were able to provide airports with valuable assistance. It is essential that any project or lease agreement, particularly one with a commercial component or that will result in job creation, involve EDAs. Airport sponsors should consider the local and state EDA/EDC as key partners in achieving overall airport development goals. These resources should be engaged in a continuing relationship versus a project-specific role. EDA/EDC should be regularly involved in airport planning and in policy discussion to keep airport development goals in the forefront of their own priorities. The EDA/EDC may be able to provide the airport with resources to market the airport to potential tenants, secure new funding and/or grants, identify tax incentives, be an advocate in the political arena, and/or assist with the grant application processes.

6.1.3 Financial and Economic Considerations

When attempting to secure either aeronautical or nonaeronautical development, the airport must offer competitive packages. Offering competitive commercial real estate packages is always a challenge when comparing leased property, with a defined term length, to a property that can be owned fee simple. Both leased and owned parcels are likely to have similar tax implications, with the exception of Foreign Trade Zone scenarios that may only be offered on leased airport property. Airport development, therefore, must be creative in its approach to compete on a level playing field with traditional development scenarios; the equalizer is often applying grants and incentives to perform some level of development on behalf of the project. Lease rates, placement of infrastructure required of airport development, planning, entitlement (the ability to develop property within a given jurisdiction), and location all play a role in the case of the tenant evaluating site options.

While the airport sponsor must maximize revenues for the airport to ensure sustainability, there are often other economic and financial factors outside the confines of the airport that may affect the desirability of a particular airport lease agreement. Economic considerations such as job creation and tax revenue generation may provide a positive impact for the local community while offering little direct financial benefit to the airport. When working in conjunction with an EDA/EDC, states, and local governments, the airport may be pressured to enter into leasing arrangements that do not directly benefit the airport but provide other benefits to the community as a whole. In this scenario, the airport sponsor should seek to protect the airport's financial interests to the extent possible. Financial incentives for a potential lessee should be provided in the form of EDA/EDC grants (state and local) and tax incentives rather than reductions in base rent. If it is deemed that lease rate reductions are necessary to secure the potential lessee, alternate forms of revenue, such as a percent of gross sale arrangements or additional fees based upon the lessee's business operations (such as fuel-flowage fees), should be actively sought prior to executing the agreement and coordinated with the FAA prior to completing negotiations.

6.1.4 Economic Impact Considerations

Quantification and description of a project's economic impact can be a powerful message and justification for project support. This *Guidebook* has already described the economic development

aspects of airport development from a variety of perspectives. The most important consideration of economic impact is the impact the project will have on the airport and on the airport sponsor. The airport development project should have a net positive impact on the airport and positively benefit the airport's financial position. Economic impact can be direct, as in the case of net revenue to the airport (the difference between revenue and costs of the airport development to the airport), or indirect, as in the case of new activity that directly causes new revenue from other tenants. An example of a direct benefit is the revenue paid to the airport for a ground lease for which the airport has no new additional expense associated with operating the airport. An example of an indirect benefit is a new development project on land already being leased to a tenant, which results in no new direct revenue to the airport but provides a new activity that generates additional revenue. This additional revenue can be increased fuel-flowage fees or perhaps new landing fees that would not exist without the new airport development project.

6.1.5 Regulatory Compliance in Development

Ensuring that any proposed project is in compliance with all applicable FAA, NEPA, state, and local regulations is the responsibility of the airport sponsor, and, as such, the sponsor must remain engaged throughout the project planning, development, and execution phases. While it can be anticipated that a third-party developer will bring an understanding of the regulatory requirements pertaining to its area of expertise (e.g., design, construction, operation), the third party may not be familiar with the regulations that guide on-airport land use and development. The airport sponsor must ensure that any proposed land use does not conflict with the airport's FAA-approved ALP, that any development does not encroach into any safety areas, or that the structures and associated operations do not inhibit the safe and efficient operation of the airport.

6.2 Lease Execution

A lease agreement may take on various forms and include differing stipulations based upon the function, location, and tenants involved (land lease versus facility lease, or aeronautical versus nonaeronautical leases, for example). Many leases will be unique in their development and execution while others will adhere to a standard airport lease policy that can be uniformly applied to multiple tenants, such as in the case of T-hangar leases. The airport sponsor must determine whether the circumstances of a specific lease negotiation are unique enough to deviate from standard terms and contract language, whether deviation from leasing policy in order to accommodate a tenant is appropriate, and/or whether similarity prevails and consistency is more important than accommodating one tenant.

Regardless of whether the anticipated lease agreement is for existing facilities or new development, or for aeronautical versus nonaeronautical use, the best practices of project development discussed below should be applied.

- While ensuring reasonable rates, leasing policies should also state the need to comply with all state, local, and federal building codes.
- Lease terms should be as consistent as possible and clearly understood by all parties.
- An airport may decide to pursue a solicitation process, but in some cases airport property may be leased without seeking competitive proposals when it is in the best interest of the airport or community and described/offered through a visioning document such as an Airport Master Plan. If a solicitation process is required, the process and criteria for approval should be stated clearly in the policy.
- The leasing policy should state whether the transfer of a lease or subletting will be permitted.

Finally, the airport should establish policy for rent increases. For example, an airport may decide to increase rents on some periodic basis, assuming rents are at fair market value, to keep pace with inflation.

6.2.1 Airport Leasing Policy

A recommended best practice is that airport sponsors develop a standard Airport Leasing Policy that applies to both facility and land leases. The Leasing Policy must be flexible enough to allow for unanticipated development opportunities while being comprehensive enough to account for multiple tenant types and operations. A standard, comprehensive Leasing Policy provides for the equitable treatment of all airport tenants and will minimize questions, concerns, and potential conflict between the airport and its tenants. The Leasing Policy should include, at a minimum, the following provisions:

- Land lease rates (per square foot), differentiated by area. Aeronautical versus nonaeronautical, for example, and consideration of the land's proximity to infrastructure.
- Hangar lease rates (per square foot), with consideration to the gauge of aircraft that the hangar will accommodate in terms of hangar doors size, height, and clear span distance.
- Building and facility lease rates (per square foot).
- Standard lease terms that are compliant with state and local law.
- FBO/SASO lease requirements, which are consistent with an airport's Minimum Standards.
- Process for adjusting rents and fees (living clause).
- Insurance requirements, preferably in one document and adopted by official action, of the governing body. Consolidation of all insurance requirements applicable to the airport allows an airport to review, update, and have them reconsidered by the governing body from time to time.
- Obligations of lessee, covered in a Rules and Regulations document.
- Routine inspection provisions for safety and compliance of airport tenants and users.
- Construction and improvement standards that outline pre-approval by the landlord and the airport sponsor, local permitting agency requirements, and FAA notification of proposed construction once all other approvals are secured.
- Subletting policy.

6.2.2 Minimum Standards

As with the Airport Leasing Policy document, the airport sponsor should have Minimum Standards that apply to all lessees. This document is necessary to ensure that lessee improvements conform to the operational standards set forth by the airport, and that the level of services provided to the aviation community is appropriate. Minimum Standards are especially relevant to leasing and developing airport property because they speak to what facilities are required for a specific activity. For example, if a parcel of land is less than one acre in size and surrounded by other development, and the Minimum Standards require more than an acre of land for FBO and other commercially-intense business activities, the value of that property, and any improvements on the property, may be affected by the fact that only certain activities will be allowed on a parcel of that size. Therefore, comparables used to value the property and improvements should only include examples with uses that would be allowed on the airport where the subject land resides. (Section 3.3 offers additional detail regarding the elements of a Minimum Standards document.)

6.2.3 Lease Rate Determination

It should always be the goal of the airport sponsor, in line with FAA guidance, to maximize revenue for the airport. An appraisal of airport property should be conducted in order to determine

the base value of airport assets. Land leases for commercial nonaeronautical uses should be based on current market rate comparables. Airside land, aeronautical facilities, and hangar rates should be based on comparable facilities at surrounding airports with similar attributes. In order to accurately value land and facilities, benchmarking of airports of similar size and with similar infrastructure (runway length, instrument approaches, security, and air traffic control for example), should be used in a consistent manner. The same benchmarked airports are tracked over time for comparative purposes. The appraisals and benchmark rates should be used as guidelines for the airport to determine baseline rates that can be subsequently adjusted as new information becomes available.

The airport may vary its lease rates depending upon size, function, location, and level of improvements to the land and the facilities being leased. For example, the rental price of a building or hangar may vary based on size, amenities, location, access, condition, construction, and allowable use by the airport. Likewise, the airport may want to vary land lease rates based upon factors such as the magnitude of the project, the synergistic effect the project may have on other tenants and/or future development, airside versus landside location, availability of utilities, and access (from both the airside and the landside).

The airport may also adjust lease rates below established baseline rates if the tenant provides additional airport revenue through other sources, such as fuel sales or percentage of gross revenue. The airport should consider modifications to rental rates that include a percentage of gross sales, depending on the type of business being conducted. Similarly, the airport might consider land leases that require a percentage of any profit be paid to the airport on the sale of leasehold improvements or equity. Regardless of the rate-setting methodology used, the airport sponsor should create a transparent process for all stakeholders to see and understand. Once transparency is established, the airport sponsor can clearly outline the rationale and justification for its rates and charges, placing itself in a defensible posture that will either hold up to stakeholder criticism or that can be adjusted for broad acceptance by the aviation community.

6.2.4 Lease Term Determination

The Airport Leasing Policy document should consider appropriate lease lengths. Land leases are routinely set at 20- to 30-year terms; lease terms beyond this length may be limited by local or state statutes. Provisions for the extension of a land lease should be included in the lease agreement and outline the requirements that must be met before the lessee is allowed to extend the lease, preferably contingent upon the lessor's concurrence and approval, by periods of 5 to 10 years. These extensions of the lease are considered addendums to the original lease document with all covenants and provisions of the original remaining in effect. The length of a lease and the ability to extend the lease term is an important consideration for potential tenants who will be making substantial investment in improvements that will need to be amortized over a number of years. It is important to consider the useful life of the improvements and the size of the tenant's investment when negotiating length of term.

Risk and reward should also be given due consideration. If improvements are very specialized, the developer may need a longer lease term than normal. Without knowing the exact functional life of the improvements, or how the niche industry might change and make the improvements functionally obsolete, the developer may require a buffer of term length to ensure that sufficient time exists to repay the debt and make a reasonable profit.

6.2.5 Reversion

Best practices for leasing and developing airport property include reversion of improvements back to the airport sponsor at the termination of the lease. Therefore, the lease must be long enough

for the developer to be able to amortize the investment the company makes in improvements, but not so long as to unnecessarily restrict the options available to the sponsor to develop and improve the airport in the future. The savvy airport sponsor will be prepared to balance these sometimes competing goals so as to attract development without impeding future options, all the while securing market-rate fees that will support the operational costs of the airport in a sustainable fashion.

6.2.6 Regulatory Compliance in Leasing

As discussed in Chapter 3 (Section 3.2: Grant Assurances and Federal Compliance), the airport sponsor must be careful when crafting the lease agreement that federal grant assurances are not violated. Within the lease document, there are four common issues that the sponsor must be aware of: lease term length, economic nondiscrimination, airport sustainability, and the granting of exclusive rights. The following addresses these points in greater detail:

- The lease term should not be longer than 50 years for land that has actual or potential aeronautical uses. The FAA may consider lease terms greater than 50 years as a disposal of land and require fair market value payment from the airport sponsor.
- The lease must ensure economic nondiscrimination; all tenants must be treated equitably when assessing rates, charges, and terms, and, to the extent possible, any provisions and rights afforded to one must be available to all.
- The airport sponsor must maintain a fee and rate structure that will make the airport as self-sustainable as possible. This requires the airport sponsor to know and negotiate market-value rate for airport property.
- The airport sponsor cannot grant a tenant exclusive rights within the lease agreement. The inclusion of noncompete clauses that strictly prohibit the airport sponsor from leasing to a competitor of a tenant can be considered a violation of this grant assurance.

6.3 Airport Sponsor Checklist

The *Guidebook* has presented multiple issues, concerns, and considerations that the airport sponsor must account for prior to entering into a lease agreement. These considerations encompass a wide range of issues that are dependent upon the type of development, anticipated uses, location on the airport, financing, funding, required financial return, grant assurances, regulatory compliance, and community impacts. The airport sponsor must be aware of each and account for their effects, financial and otherwise, when structuring and implementing a lease agreement.

The following sections will provide the airport sponsor with general checklists of items that must be considered in the project development analysis (applicable to new or redevelopment projects) and when structuring a lease agreement (applicable to all airport lease agreements). The checklists should be used to prepare the airport sponsor for negotiations by stimulating the thought process and considering the long-term implications of a proposed airport development. The checklists may also be used to prepare for community discussion or to prompt further research.

6.3.1 Project Analysis Checklist

New development or redevelopment of existing facilities provides the greatest challenge for the airport sponsor, as multiple planning, stakeholder, and financial variables may exist. These variables, which are often absent in the case of existing facilities such as hangars, need to be considered throughout the project planning process. The airport sponsor's role in the development process is to ensure the airport's financial sustainability, consider the highest and best use of

airport land resources, and ensure the project complies with regulatory requirements and grant assurances. To help achieve these goals, the sponsor must consider all facets of the development process and be ready to address the following questions in order to determine whether a potential project is a fit for the airport:

Planning:

- ☐ Does the project fit within the stated goals listed in the airport visioning documents (Airport Master Plan, Land Use Plan, and Airport Business Plan)?
- ☐ Does the project comply with community land use plans, zoning ordinances, and other applicable planning documents?
- ☐ Is the proposed development in compliance with the FAA-approved Airport Layout Plan?
- ☐ Does the proposed use of the property violate any grant assurances?
- ☐ Is the proposed use of the property in compliance with security and environmental regulation?
- ☐ Does this project represent the highest and best use of the property?
- ☐ Is the proposed project in conflict with any current airport agreements such as noncompete or right-of-first-refusal clauses that may be in effect with an existing tenant?
- ☐ If the property is airside, or has airside access, does the proposed use of the property conform to desired aeronautical uses (airside land being used for aviation purposes, for example)?

Stakeholder Involvement:

- ☐ Have all of the potential stakeholders in the project been identified?
- ☐ Have the perspectives, concerns, and resources (potential funding sources, marketing resources, and development expertise, for example) of the stakeholders been identified?
- ☐ Are plans in place to reach out to the identified stakeholders, and are mechanisms such as public meetings, round-table discussions, and focus groups planned to facilitate communications and dialogue?

Finance and Funding:

- ☐ What will the project cost in terms of immediate outlay of resources, and what ongoing operational, maintenance, and financing costs are anticipated in the future?
- ☐ Where will the project funding come from, and what entity/stakeholder is responsible for securing the funding?
- ☐ Will the airport sponsor's debt capacity and/or creditworthiness be impacted by financing this project?
- ☐ Does the airport have the ability to issue debt, either through the airport sponsor organization or through another applicable public-sector entity such as the city, county, or state government?
- ☐ Does the project qualify for EDA/EDC grants or bonds (either local, state, or federal)?
- ☐ Will the airport revenue anticipated from the leasing of the property be sufficient to cover debt obligations and recurring operational costs assigned to the sponsor?
- ☐ Will the airport sponsor recognize revenues in line with the valuation estimates or appraised market value of the property?
- ☐ Has a pro forma financial analysis of the project, from the airport sponsor perspective, been conducted that will forecast the project-specific financial implications for the airport?

6.3.2 Lease Agreement Checklist

When an airport sponsor plans to enter into a lease agreement, it is imperative that each potential aspect of the agreement, or lease element, be carefully considered. The potential impact on the airport's financial health, regulatory compliance, and future development potential must

be considered. The following list of questions represents a checklist of considerations that the sponsor must address within the framework of the lease agreement:

- ☐ Are the lessor and lessee clearly identified in the lease document? This element of the lease agreement should include a lessee point-of-contact, a statement requiring updated contact information should that information change during the lease term, and any identification of a dba (doing business as).
- ☐ Are the premises (also referred to as the “property”) clearly defined in the lease agreement? This element must detail the land and improvements subject to the lease agreement and will typically consist of an “Exhibit” referred to in the lease document. The premises exhibit should contain a drawing delineating the boundaries of the leased land and a listing of all the pertinent features and improvements subject to the lease agreement.
- ☐ Does the lease agreement stipulate the approved use of premises? For a lease with a business entity, this element should identify if and what type of business and commercial operations may take place at the leasehold. Approved uses should be listed in the Airport Minimum Standards and Rules and Regulations documents, and the lease needs to reference these documents in the use of premises section.
- ☐ Is the length of the lease stated with a clear “commencement date” on which the lease agreement will take effect? The lease term element of the lease agreement will also include any extension options, if included in the agreement.
- ☐ Does the lease term violate any local or state statutes regulating the maximum term that may be offered by a public agency? The airport sponsor must ensure that the lease term does not exceed what is allowable by law.
- ☐ Does the lease agreement clearly state the rent due to the lessor, the schedule of payment, acceptable method of payment, and penalties for late payment?
- ☐ Is there an escalation clause that will allow the airport sponsor to adjust the lease rent? The escalation clause within the rent element must clearly state when an adjustment will be made (every 5 years from the commencement date of the lease agreement, for example), and what factors the rent escalation will be based on, such as annualized CPI or appraised value.
- ☐ Is the division of responsibility for leasehold operation and maintenance clearly stated for the lessee and lessor? The operation and maintenance section of the lease should list the specific responsibilities of the lessee for leasehold maintenance and upkeep, and should reference the Airport Minimum Standards document.
- ☐ Is the process for the construction of improvements by the lessee clearly spelled out? The lease agreement should detail the required approval process regarding any repairs, renovations, improvements, and alterations to the leasehold. Since improvements must comply with the Airport Rules and Regulations and Minimum Standards, these documents should be referenced in the construction of improvements lease element.
- ☐ Does the lease clearly state how and when ownership of the leasehold improvements will revert to the airport? The reversion clause should state that at the termination of the lease agreement all improvements revert to the ownership of the airport. Termination of the lease is not limited to expiration of the lease term, but may also include the following:
 - Failure to pay rent,
 - Violation of Airport Rules and Regulations,
 - Failure to comply with the Airport Minimum Standards,
 - Violation of a lease-specific clause within the agreement,
 - The triggering of a noncompete clause, and
 - Airport purchase of the leasehold improvements.
- ☐ Are the rights, reservations, and obligations of both the lessor and lessee addressed in the lease agreement? These rights and reservations may vary depending upon the lease type and activity conducted on the property but will typically reference the Airport Rules and Regulations and

Minimum Standards documents as well as require compliance with any environmental and security regulations that may be applicable.

- ☐ Does the lease agreement allow for the inspection of the premises by the airport sponsor? This right may be deemed necessary by airport management in order to ensure lessee compliance with Airport Rules and Regulations.
- ☐ Are the insurance obligations of the lessee clearly spelled out in the lease agreement? Insurance requirements, at a minimum, should outline coverage types and amounts so that the airport is protected from financial liability. If the primary lessee is subleasing all or a portion of the property, the lease agreement must stipulate that the sublessee be in compliance with the insurance requirements outlined within the lease.
- ☐ Does the lease agreement include a hold-harmless provision or indemnity clause that will protect the airport sponsor from any legal action, suits, proceedings, claims, damage, loss, or liability resulting from the actions of the lessee?
- ☐ Will the lease agreement allow the primary lessee to sublease all or a portion of the property? If the lessee will have the right to sublease the property, the lease agreement must specify the responsibilities of the lessee in relation to the sublessee. Detailed provisions should be spelled out in the lease agreement and any operating agreement to avoid conflict between the parties in a long-term lease agreement.
- ☐ Does the lease agreement include any potential grant assurance violations relating to lease-term length, economic nondiscrimination, airport sustainability, and the granting of exclusive rights? If there is a potential cause for concern, has the FAA been consulted and approval sought?

The airport sponsor checklists provided are by no means intended to represent an exhaustive list of issues that can be expected to arise when an airport sponsor enters into a lease agreement. The list of variables—when dealing with the diverse types of development that occur within the confines of an airport, coupled with a multitude of potential stakeholders and their divergent interests present in each project and lease—will ensure that a single, standard lease agreement and project development approach will never be achieved. Due to the many variables that exist, there is simply no one standard for leasing and/or project development that will fit all scenarios, though the checklists provided will serve as an excellent starting point and can be applied to many scenarios that the airport sponsor might encounter.

As with the *Guidebook* in its entirety, the checklists should serve as the foundation for structuring a lease agreement that is beneficial to the airport, the tenant, and the community, while protecting the airport sponsor from financial, regulatory, and legal ramifications of a poorly constructed lease agreement. The questions asked within the checklist should serve to raise awareness of the airport development issues and responsibilities on the part of the airport sponsor. The subjects discussed and addressed were ultimately designed to help guide the airport sponsor through the many facets of airport project planning, development, and leasing policy.

Exhibit C



City of Ocala Lease Policy

The City of Ocala recognizes the importance of Ocala International Airport to the City, the community, the Florida Aviation System, and the United States Department of Transportation Federal Aviation Administration (FAA). Consequently, it is recommended that the City adopt a policy for the leasing and use of Airport land that is designed to:

- Encourage and ensure stable, essential, and safe aviation services;
- Foster the growth of non-aviation development on Airport land;
- Provide a fair market return to the Airport; and
- Comply with FAA and State obligations, policies and regulations.

This section sets forth the policy of the City of Ocala with respect to the leasing of Airport land and facilities and is arranged as follows:

- 1.0 Effective Date, Revisions, and Renewal
- 2.0 Definitions
- 3.0 Authority
- 4.0 General
- 5.0 Federal and State Requirements
- 6.0 Commercial Activity
- 7.0 Non-Commercial Aeronautical Activity
- 8.0 Airport Lease Categories
- 9.0 Airport Rates, Charges, and Fees
- 10.0 Miscellaneous
- 11.0 Lease Application and Proposal Requirements

1.0 EFFECTIVE DATE

This policy is effective September 20th, 2011, pursuant to Resolution 2011-58 of the City Council.

2.0 DEFINITIONS

Aeronautical Activity - Any activity which involves, makes possible, or is required for the operation of aircraft or which contributes to, or is required for, the safety of such operations and shall include, all activities commonly conducted at Airports such as charter operations, pilot training, aircraft rental, sightseeing, aerial photography, crop dusting, aerial advertising, surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products (whether or not conducted in conjunction with other included activities), repair and maintenance of aircraft, sale or maintenance of aircraft parts accessories radio or communication and navigation equipment, flying clubs, commercial skydiving, ultra-light aircraft operations and any

other activity which, because of its direct relationship to the operation of aircraft, can appropriately be regarded as an “aeronautical activity.”

Airport - The Ocala International Airport, operated by the City of Ocala, Florida.

Airport Advisory Board - The board created to assist the City Council with all non-personnel issues affecting the Airport.

Airport Commercial Lease - A Lease with a Commercial Operator for a nonexclusive right to conduct a specified commercial activity at the Airport.

Airport Development Guidelines - The standards developed to facilitate the short and long term goals for future development at the Airport prepared by the City dated October 16, 2007, as amended.

Airport Layout Plan - The Airport Layout Plan as approved by the Federal Aviation Administration (FAA), as amended.

Airport Manager - The City Manager or his/her designee who has direct supervisory and functional responsibility for the operation and maintenance of the Airport.

Airport Tenant or Tenant - Any person, leasing property or facilities at the Airport under a valid Lease.

Building - Any existing or planned facility, hangar, or T-hangar of wood, concrete, concrete block, or substantial metal construction on a concrete foundation to be located on Airport property and approved by the Airport Manager and the City.

Commercial activity - Any activity by any person, the purpose of which is to secure earnings, income, compensation, or profit, whether such objective or objectives are accomplished or not.

Commercial aircraft - Any aircraft used in the conduct of any commercial activity.

Commercial Operator - A person who conducts any commercial activity which uses the Airport.

Exclusive Right - A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right.

Fixed Base Operator (FBO) - Any person, firm, general or limited partnership, corporation, trust or association making application for, leasing or using any land or facility at the Airport, for the purpose of providing, or engaging in, aeronautical services and/or activities for the public.

Lease - A lease between the City and a Tenant.

Master Plan - Current master plan report as approved by the City, the State, and the Federal Aviation Administration.

Minimum Standards - The qualifications or criteria that have been established by City as *minimum* requirements that must be met as a condition for the right to conduct a *commercial aeronautical activity* on the Airport, as now existing or hereafter amended.

Person - An individual, partnership, corporation, LLC, or similar entity.

Sub-Tenant - A person occupying Airport property under a sublease with a Tenant.

Through the Fence Operation - Access to the Airport by independent operators offering an aeronautical activity, or access to aircraft based on land adjacent to, but not part of, the Airport.

Transient Commercial Aircraft Operator - A person or corporation that provides on demand flying services, is based at another Airport, and only prepositions aircraft, or conducts operations with pre-positioned aircraft, at the Airport.

3.0 AUTHORITY OF THE CITY

The Airport Manager shall at all times have the authority to take those necessary and legal actions required to ensure compliance with the provisions of the following:

- Existing Leases, licenses, permits, and other written agreements between the City and persons at the Airport, including the institution of lawsuits to enforce a Lease.
- This policy, and those other policies, rules or regulations established by the City Council, which apply at the Airport.
- Those temporary restrictions established in accordance with a federal, state, or city mandated activity or plan, or as may be required to safeguard people, aircraft, equipment or property at the Airport.
- Those responsibilities levied on the City by the federal or state governments with regards to Airport Management.

Any person wishing the exclusive use of any parcel of land on the Airport, or of any city-owned or operated facility must enter into a Lease with the City specifying the terms and conditions of such use.

The City Council may establish standard terms and conditions for such agreements by resolution, and may delegate by resolution the authority to execute and terminate such standardized agreements to the Airport Manager.

The Airport Manager may authorize an interim or emergency agreement to occupy or use city-owned improvements and infrastructure by appropriate public agencies. Examples of situations that may be suitable for such authorizations are military or law enforcement activities and the temporary occupation of Airport areas by government agencies during natural disasters, or aircraft accident investigations.

All users of the Airport shall submit to the Airport Manager any report or reports or information regarding their operations at the Airport when and as required by the City Council.

4.0 GENERAL

An Airport Lease Policy is needed at the Airport to provide a consistent and fair methodology for establishing Airport Leases. The Airport Lease Policy reflects the following:

A. Provision of Essential Aviation Services - Essential aviation services are needed at the Airport to provide for the aviation needs of the local community, region, and Florida Aviation System. The Lease policy will encourage and require the provision of stable, efficient, and safe aviation services.

B. Aviation Growth - The Airport Lease Policy will recognize that aviation use of Airport land is primary and will foster the stable growth of aviation at the Airport. Non-aviation uses of Airport land will be permitted only on portions of Airport land not needed for aviation purposes, as set forth in the Airport Master Plan. Non-aviation uses of Airport land will be in accordance with FAA policy and Airport rates and charges. Areas reserved for long-term aviation needs may be used for non-aviation purposes on a temporary basis if such short-term use does not conflict with the existing operation of the Airport or long-term expansion plans.

C. Lease Revenues - All revenues from aviation and non-aviation Leases will remain in the City's Airport fund and will be expended only for development, management, maintenance, operating, and/or other expenses directly related to the Airport.

D. Minimum Operating Standards/ Rules & Regulations - Any person, partnership, firm or corporation desiring to establish or renew a Lease to engage in any activity at the Airport must do so in accordance with current Airport Minimum Operating Standards and Rules and Regulations as may be amended by the City.

E. Uniform Application of Policies, Standards, and Regulations - The City of Ocala desires to make the opportunity to engage in commercial aeronautical activities available to any qualified person that meets reasonable standards. The City desires to require compliance with all standards and regulations on a uniform and objective basis, without unjust discrimination. The City will allow the safe and efficient use of the Airport by all types, kinds, and classes of aeronautical activity; however, the City may restrict or prohibit any type, kind, or class of activity that compromises the safety or efficiency of the Airport. Non-standard terms successfully negotiated by Tenant are not transferable or assignable and will be specifically noted as such in the Lease.

This policy is designed to promote fairness and consistency, be applied uniformly, and prohibit economic discrimination relative to aviation Leases. This shall not preclude the City from approving other Leases pursuant to Resolution 2011-58.

5.0 FEDERAL AND STATE REQUIREMENTS

In accepting Federal and State grants for the development of Ocala International Airport, the City of Ocala has agreed to assume numerous obligations pertaining to the operation, use and maintenance of the Airport. Most of these federal obligations are embodied in Federal Grant Applications for federal assistance as sponsor assurances and legally bind the City to compliance with their provisions. The State obligations are embodied in Exhibit "C" of the City's Joint Participation Agreements (JPA) with State.

The City of Ocala desires to maintain full compliance with all Federal and State obligations, policies, and regulations. Many of these obligations relate directly to the leasing of Airport land and are contained within FAA Order 5190.6A, Airport Compliance Handbook, and the FAA publication "Terms and Conditions of Accepting Airport Improvement Program Grants".

The prime obligation of the City of Ocala is to operate the Airport for the use and benefit of the public. Associated with this obligation is the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer aeronautical services to the public or support services to aircraft operators. Accordingly, unless the City provides these services it shall negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities.

Accordingly, it is hereby the policy of the City of Ocala to:

- Operate the Airport for the use and benefit of the public, and to make it available for all types, kinds, and classes of aeronautical activity.
- Make the opportunity to engage in commercial aeronautical activities available to any person, firm, or corporation that meets reasonable minimum standards established by the City.
- Limit or prohibit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public.
- Impose terms and conditions on those offering services and commodities to the public which are related to aeronautical activity only on a fair and reasonable basis and without unjust discrimination.
- Make facilities available to the public on fair and reasonable terms and without unjust discrimination.
- Endeavor to make the Airport as self-sustaining as possible.
- Implement revisions to adopted minimum standards only when the purpose of such revisions is to improve the quality of services to the public and/or promote fairness among tenants.
- Rates, charges, and fees derived from Lease of facilities will be at fair market rental value or higher.
- The Airport and all facilities which are necessary to serve the aeronautical users of the Airport, shall be operated all times and safe and serviceable condition and in accordance with the

minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation. The City will not permit any activity or action which would interfere with the operation of the Airport for Airport purposes.

6.0 COMMERCIAL ACTIVITIES

All Commercial Operators, other than Transient Commercial Aircraft operators, shall enter into an Airport Commercial Lease, on those terms and conditions established by resolution of the City Council, before beginning the conduct of any commercial activity, basing an aircraft on the Airport, or occupying any property upon the Airport

Persons who have not entered into a Lease, other than transient aircraft operators, or those otherwise permitted by this chapter, are prohibited from offering any commercial service to the public upon or within the boundaries of the Airport. The holder of an Airport Commercial Lease will be authorized to conduct only those legal commercial activities approved in the Lease. Extensions to existing Airport Commercial Leases will not establish new activities in which the commercial subtenant may engage.

Exempted Commercial Activities

Certain Commercial Operators offer services to the public at the Airport in common with the rest of the community, and do not require the Airport for the conduct of their business. These activities are currently exempted from the requirement to obtain an Airport Commercial Lease, and are only requested to obtain those permits and licenses required by law. These exempted activities currently include:

- ☒ Taxicabs, limousines, and hotel/motel shuttle buses.
- ☒ Mail and package pickup and delivery at fixed Airport addresses (this does not exempt mail and package pickup and/or delivery to or from an aircraft).
- ☒ Public utilities and services contracted by the City.
- ☒ Landscaping and janitorial services.
- ☒ Tow trucks.
- ☒ Small businesses engaged in non-aeronautical commercial activities, located in approved Airport office suites, subleasing or renting from Airport tenants authorized to sublet such space.
- ☒ Licensed general contractors, plumbers, electricians, and similar construction trade persons.

7.0 NON COMMERCIAL AERONAUTICAL ACTIVITY

Persons desiring to “home base” an aircraft at the Airport for non-commercial purposes shall execute a Lease or enter into a sublease with an existing tenant, appropriate to the type of storage facility utilized, with the City and pay all fees, rates, and charges as established by City Policy, and be bound to all Airport rules, regulations, and policies.

Non-profit clubs and organizations.

Non-profit clubs and organizations shall enter into a Lease with the City prior to basing offices, facilities, personnel, or aircraft at the Airport. Such agreement shall include those terms and conditions under which the club or organization may operate. Only clubs or organizations possessing a 501(c) (3) tax exemption from the Internal Revenue Service, or which are registered as a Florida non-profit corporation, may be based at the Airport. Non-profit clubs shall not offer any goods or services whatsoever to any person other than another member of the same club.

8.0 AIRPORT LEASE CATEGORIES

Leases and rates and charges at the Airport are established in accordance with aviation and non-aviation categories, as follows:

A. Aviation - Includes Fixed Base Operators (FBO's), , and any other commercial or non-commercial aeronautical aviation activity.

B. Non-aviation - The non-aviation category includes all non-aeronautical uses of the Airport land such as restaurants, motels, and commercial/industrial parks, corporate and recreational facilities.

9.0 AIRPORT RATES AND CHARGES

The City Council may establish by resolution those fees and charges, and those terms and conditions it deems appropriate and applicable to Leases. Daily use fees may be suspended by the Airport Manager for special events.

In establishing base rental and other fees at the Airport, the City's primary objective is to ensure the provision of, at least, essential aviation services to the community and, at least, offset the cost of maintaining, operating, and developing the Airport. The secondary objective is to obtain fair market revenues from non-aviation uses of Airport land, and to achieve financial self-sufficiency for the Airport through these revenues.

A. Base Minimum Rental

Aviation - The minimum annual base rental shall be between eight and twelve percent (8% - 12%) of the appraised fair market value of the leased land and improvements. Small parcels of one acre or less shall increase at three percent (3%) annually, larger parcels of more than one acre shall have rates that are reviewed annually and adjusted in accordance with the All Items South Urban (not seasonally adjusted) Consumer Price Index (CPI-U).

Non-aviation - Current marketable rates shall be charged, but these rates will not be lower than a minimum annual base rental of between eight and twelve percent (8% - 12%) of the appraised fair market value of the leased land. Every effort will be made to obtain a maximum fair return. Annual adjustments will be made in accordance with the CPI-U. Appraised value will be based on fair market value.

B. Other Fees

In addition to the base minimum rental, other fees for new or renewed aviation and non-aviation Leases may be negotiated by the Airport Manager. These fees may include, but are not limited to, fuel flowage, percent of gross revenues, and others appropriate to the type of business. These fees are subject to approval of the City, and shall be imposed with fairness and consistency, and without unjust discrimination.

10.0 Miscellaneous

1. Any individual, partnership, firm or Corporation desiring to initiate or renew a Commercial Activity at the Airport must prove financially and technically able. Prior to City Council review of any application or renewal, the Tenant, or proposed Tenant, shall furnish a statement of financial condition, certified by an officer of the firm as to its correctness.
2. Any individual, partnership, firm, or corporation desiring to construct an aircraft hangar on Airport property may do so on a site approved by the City, not in conflict with existing uses, and in conformity with the Airport Master Plan and Development Policy of the Airport. The facility must have a life expectancy of at least 40 years. All construction plans must be approved by the City. The Lease will contain requirements that the Tenant maintain the Building to stringent standards so that at the end of the Lease period, the Building will be in a high-class condition, reasonable wear and tear is expected. The Tenant shall be limited to uses of these Buildings for only those purposes specifically defined by the Lease, and shall not be authorized to engage in any additional activities which may conflict with Airport minimum operating standards.
3. The Tenant shall be required to obtain and maintain insurance on the Building and other assets in sufficient amounts to allow reconstruction at then current costs, and to hold the City harmless from any claim. All Tenant insurance coverage will be approved annually by the Airport Manager. The Airport Manager shall consult the City's insurance carrier with regard to recommended policy limits prior to entering into a Lease or annual insurance renewal.
4. No additional business activity, not specifically authorized by the Lease, shall be conducted without the prior written approval of the City.

11.0 Lease Application Process & Proposal Requirements

Leasing of Facilities at Ocala International Airport

Any individual, firm, or corporation desiring to lease Airport facilities shall be required to submit a written application containing the items specified herein. The City shall review, evaluate, and act upon the application within a period of 90 days from receipt of the completed application following the procedures contained in this section.

Lease Proposal Requirements

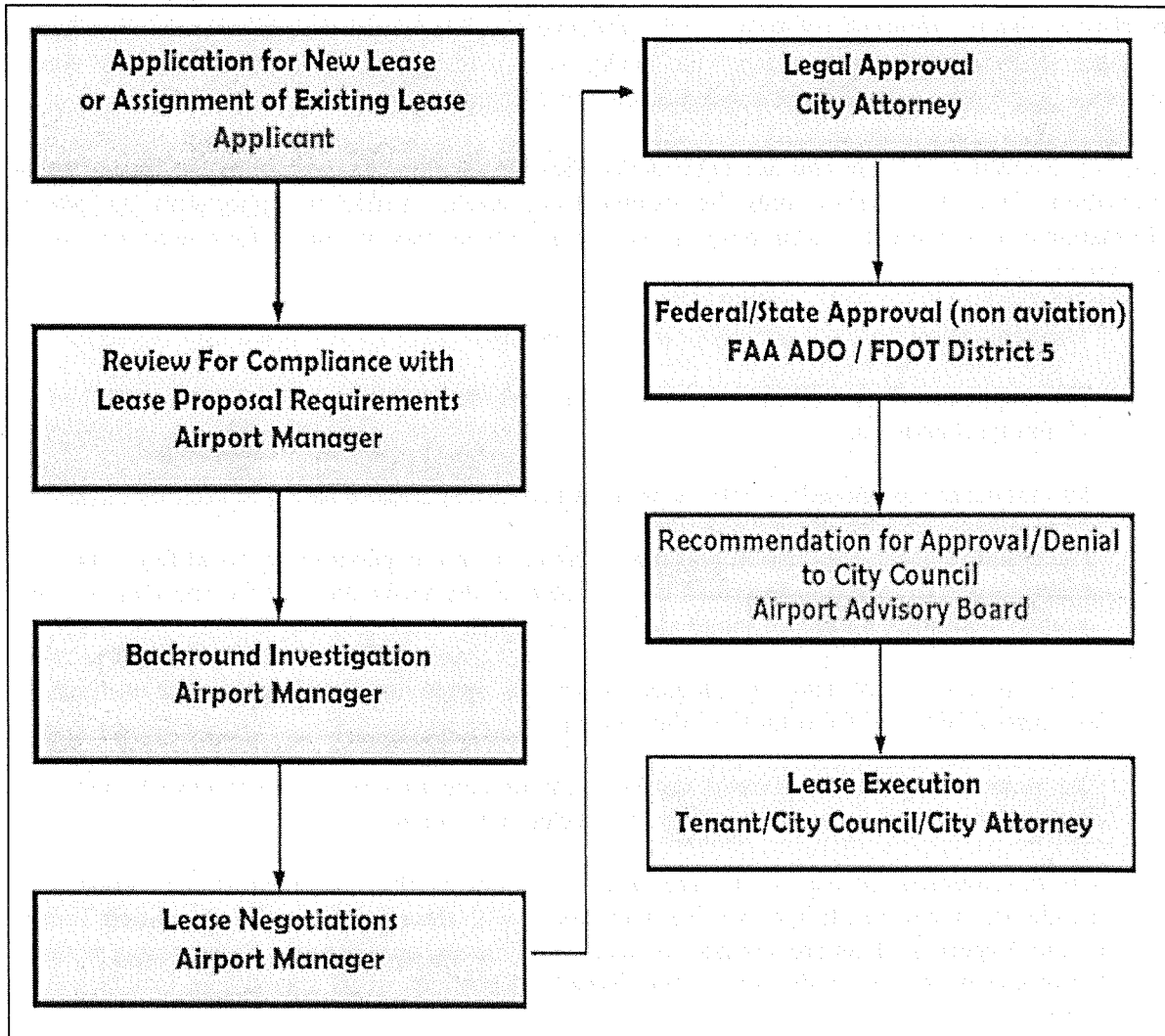
The City will not accept, or take action on, a request to lease Building space or land area, or a request for assignment of an existing Lease, or in any way permit the installation of a Commercial Activity

until after the proposed Lessee, in writing, submits a proposal, which clearly sets forth the scope and type of operations being proposed, including the following:

1. A description of the proposed Commercial Activity and detailed business plan.
2. The names of all parties owning an interest in the business and those that will be directly responsible for the day to day management of the business.
3. The amount of land Tenant desires to lease.
4. The facilities to be constructed or leased.
5. The services to be offered, hours of proposed operation, number of persons to be employed, and the number of aircraft to be based at the Airport.
6. Certificate of Insurance or other satisfactory evidence indicating the capability to obtain coverage as required.
7. Evidence of financial capability (including current financial statement) to perform and provide the services and facilities proposed.
8. Historical evidence of satisfactory performance of previous similar Commercial Activity at other locations, including dates and location. Record of any insolvency or bankruptcy proceeding in any past business relationships.
9. Aeronautical qualifications including years' experience in proposed operation, past experience in other related activities, and four references.
10. Other information the City may require and specifically request.
11. Payment of application fee in an amount sufficient to reimburse City for review, processing and background investigation.

Lease Application / Proposal Process

← 90 Days from Receipt of Application →



CITY APPLICATION REVIEW AND ACTION

Following receipt of an application for Lease of Airport facilities, or assignment of an existing Airport Lease, the Airport Manager shall evaluate the application(s) on the basis of the items specified in "Lease Proposal Requirements". A background investigation shall be performed relative to criminal history, immigration status, credit worthiness and past business performance. The Airport Manager shall forward the results of the background investigation of applicants to the Airport Advisory Board, which shall make a recommendation for approval or denial.

City will attempt to review and act upon all applications within 90 days from the receipt of the application. This time period may be extended to provide sufficient opportunity to provide information or to comment on a proposed Lease. Applications may be denied for one or more of the following reasons:

1. The application does not comply or meet this policy.
2. The applicant does not meet qualifications, standards and requirements established by Minimum Standards.
3. The applicant's proposed operations or construction will create a safety or security hazard.
4. The granting of the application will require unauthorized expenditure of local funds, labor or materials on the facilities described in, or related to, the application, or the operation will not provide the minimum rate of return specified in the City Lease Policy.
5. There is no appropriate or adequate available space or Building on the Airport to accommodate the entire activity of the applicant.
6. The proposed operation, Airport development or construction does not comply with the approved Airport Layout Plan or Airport Development Guidelines.
7. The development or use of the area requested will result in a congestion of aircraft or Buildings, or will result in excessive interference with the operations of any existing Tenant on the Airport, such as preventing free access and egress, or will result in depriving, without the proper economic study, an existing Tenant of portions of its leased area in which it is operating.
8. A party applying, or having an interest in the business, has supplied false information, or has misrepresented a material fact in the application or in supporting documents, or has failed to make full disclosure on the application.
9. A party applying, or having an interest in the business, has a record of violating the Rules, or the Rules and Regulations of any other Airport, Civil Air Regulations, Federal Aviation Regulations, or any other rules and/or regulations applicable to this or any other Airport.
10. A party applying, or having an interest in the business, has defaulted in the performance of any Lease or other agreement with the City or any lease or other agreement at any other Airport.

11. A party applying, or having an interest in the business, is not sufficiently credit worthy and responsible in the judgment of the City to provide and maintain the business to which the application relates, and to promptly pay amounts due under the Lease.
12. The applicant has committed a crime, or violated a local ordinance, rule, or regulation, which adversely reflects on its ability to conduct the operation applied for, or otherwise renders applicant unsuitable.
13. Any other reason that would result in an activity deemed not consistent with City Policy, or not be in the best interest of the City of Ocala or National and/or Florida Aviation System.
14. The applicant proposes a "Through the Fence" operation.

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Exhibit D



CITY OF REDDING, CALIFORNIA

Council Policy

SUBJECT MARKETING/LEASING POLICY FOR THE REDDING AIRPORT BUSINESS PARK (RABP)	Resolution Number	Policy Number	Effective Date	Page
	95-146	303	06-06-95	1

PURPOSE:

The purpose of this Policy is threefold:

1. To formally establish the City's intent to compensate a real estate broker, if that broker is determined to be the procuring cause of a lease within RABP;
2. To set forth a realistic rate of return upon which rental amounts will be based within the RABP; and
3. To provide a means, through either an "Option Agreement" or a "First Right of Refusal Agreement" whereby a potential lessee might reserve a particular parcel of land within the RABP for a short period of time in order to facilitate completion of a specific site evaluation.

POLICY:

I. BROKER PARTICIPATION

- A. The City will allow a licensed real estate broker to participate in the leasing of RABP land and shall pay a commission to such broker if:
 - 1) The broker is certified by lessee to be the procuring cause of the lease;
 - 2) The broker certifies that he/she is not the lessee, an employee of the lessee, or does not own or have substantial control over or in the lessee's business; and
 - 3) The broker certifies that he/she has represented the City's interest in the lease transaction.
- B. The City has the sole right to accept or reject any offers to lease and no commissions will be paid on a transaction which the City has rejected.
- C. No rental rates will be lowered solely due to the absence of broker involvement.
- D. The monetary commission payable shall be established at the equivalent to the first year rent on the subject lease, subject to receipt of rental payments by lessee.
- E. Commission payments deemed by the City to be incurred and payable shall be paid only after scheduled lease payments have been received by the City and in accordance with a formula which provides that twelve and one-half (12½) percent of the total commission due is payable at the end of each three (3) months period during the first twenty-four (24) months of the lease term.

CITY OF REDDING, CALIFORNIA

Council Policy

SUBJECT MARKETING/LEASING POLICY FOR THE REDDING AIRPORT BUSINESS PARK (RABP)	Resolution Number	Policy Number	Effective Date	Page
	95-146	303	06-06-95	2

- F. The City will pay commissions for transactions involving present lessees acquiring additional sites provided the real estate broker meets the requirements outlined in Paragraph A.
- G. The City shall not pay commissions on any break-out (divided) leases or subleases. Also, the City shall not pay commissions on any "First Right of Refusal" or "Option to Lease" transactions.
- H. Leasing commissions shall be established at lease onset and no adjustments shall be made in the established commission due to changes in the lease rental rates.
- I. In the event more than one broker is involved in any one lease transaction, the City will only pay a single commission, which will be determined from the certification of the lessee establishing the procuring broker.

II. LEASE TERM & RATES

- A. A lease agreement for land within the RABP may have a fixed term of 30, 35, or 40 years, depending upon the rental rate initially established. Specifically, a lease term of 30 years shall be based upon an initial rate of return equal to 7.0 percent of the Market Value, a lease term of 35 years shall be based upon 7.5 percent, and a lease term of 40 years shall be based upon 8.0 percent.

- B. Rental rates shall be established/adjusted every 5 years in accordance with the following:

<u>YEARS</u>	<u>METHOD</u>
1 - 5	(7.0, 7.5, or 8.0%) OF APPRAISED VALUE
6 - 10	1/2 OF CPI INCREASE
11 - 15	(7.5, 8.0, or 8.5%) OF APPRAISED/ESTIMATED VALUE 1
16 - 20	1/2 OF CPI INCREASE
21 - 25	(8.0, 8.5, or 9.0%) OF APPRAISED/ESTIMATED VALUE
26 - 30	1/2 OF CPI INCREASE
31 - 35	(8.5, 9.0, or 9.5%) OF APPRAISED/ESTIMATED VALUE
36 - 40	1/2 OF CPI INCREASE
OPTIONS	(7.0, 7.5, or 8.0%) OF APPRAISED/ESTIMATED VALUE

Note: Each of the above percentages are related to the applicable lease term, i.e., 30, 35, or 40 years. Also, each 5 year adjustment shall not be greater than 10% of the previous, but never less.

CITY OF REDDING, CALIFORNIA

Council Policy

SUBJECT MARKETING/LEASING POLICY FOR THE REDDING AIRPORT BUSINESS PARK (RABP)	Resolution Number	Policy Number	Effective Date	Page
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- C. An "Option to Extend" a lease agreement may be negotiated in conjunction with the initial establishment of such lease agreement, but in no event shall the amounts of the fixed term and the options combined exceed 50 years.
- D. A "First Right of Refusal" with a fifteen day call-period may be offered for a rate that is one half the calculated regular monthly rental rate.
- E. An "Option to Lease" for a period of sixty days may be offered for a rate equal to the calculated regular monthly rental rate.
- F. Gross leasing of land within RABP consisting of five or more acres may have a rental which is phased in over a three year period, i.e., 33 1/3% for the first eighteen months and 66 2/3% for the second eighteen months.

RESOLUTION NO. 14-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
ADOPTING AN INTERIM AIRPORT LEASE POLICY

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

Whereas, the City has numerous leases at the Auburn Airport
Whereas, leases that were negotiated in the 1970's and 1980's are approaching the end of their term and may wish to be extended
Whereas, some leaseholds have expressed a desire to make improvements to their facilities, improvement that will need to secure financing so as to be undertaken
Whereas, the asset being financed have must have both a life expectancy and amortization period that exceeds that of the financing
Whereas, several ground leases over time have been negotiated absent a formally adopted City Council Airport Lease Policy detailing how to approach recalculating rents, terms, and conditions for a lease extension
Whereas, the City of Auburn desires to establish a clear policy on lease extensions, but recognizes that in doing so it may take four to six months
Whereas, the City Council can opt to create an Interim Airport Lease Policy, while concurrently working on a permanent "global solution" to the lack of an Airport Lease Policy incorporating some of the best practices outlined in Exhibit B of the March 10, 2014 Staff Report to the Auburn City Council;

NOW THEREFORE BE IT RESOLVED, the City Council of the City of Auburn hereby adopts as their Interim Airport Lease Policy the following provisions:

Procedures for the Extension of Existing Leaseholds

Step 1: The City shall first calculate the "new proposed rent" by adjusting the current rent for inflation (San Francisco-Oakland CPI) from the date of the originally executed lease to the date of the request. For example, a lease executed in 1975 would have the rent calculated by the increase in the rate of inflation from 1975 to 2014.

Step 2: Using an appraiser acceptable to the City Manager, the appraisal will determine the value of the asset or annual cash flow. This value would be multiplied by 6% to arrive at a value or "appraisal rent".

Step 3: The Interim Airport Lease Policy rent would be the greater of the two values per year, until such time as a new "global" Airport Lease Policy is adopted by the City Council. This new rent would be adjusted annually by the San Francisco-Oakland CPI.

Step 4: In no case shall the rent for an extension of the leasehold be less than the current rent the City is receiving plus 10%: Old Rent \$100 X 10% = \$110.00 new rent.

1 Step 5: In an effort to cushion the impact of a major rent increase resulting
2 from the above calculation, the rent increase may be phased-in. If the new
3 rent is less than 10% the rent shall not be phased-in and will go into effect
4 upon the execution of the leasehold extension. If the rent increase is more
5 than 10% but less than 20% of the current rent, a three year phase in would
6 occur plus the above annual CPI. If the rent increase is more than 20% but
7 less than 30%, a five year phase-in period would occur plus above annual. If
8 the new rent is over 30%, a ten year phase-in period would occur plus above
9 annual. Regardless, of the phase in period, upon the completion of the phase-
10 in period, a new rent will be determined subject to the then adopted City
11 Council Airport Lease Policy.

12 New Leaseholds

13 The rent for new leaseholds will be determined by an appraisal of the proposed
14 use/improvement. Regardless, once the value of the asset or projected cash
15 flow is determined, the rent will be 6% per year of the value of the asset or
16 cash flow whichever is greater. A credit or discount may be granted to the
17 new leasehold for quantifiable economic multiplier effects associated with the
18 new leasehold subject to review and approval by the City Council. These
19 discounts shall be known as "performance indicators".

20 Leaseholds under the Interim Airport Lease Policy that fail to meet the
21 performance indicators two years in a row will be required to pay the original
22 calculated rent absent the credits or discounts. Once the City Council adopts a
23 "global Airport Lease Policy solution", the Leasehold shall be subject to a
24 recalculation of the rent, based on the City's new Airport Lease replacing the
25 Interim Airport Lease Policy.

26 Assignments

27 Assignments under the Interim Airport Lease Policy will be exempt provided
28 there is no modification to the terms and conditions of the existing lease. The
exception to this rule would be if the assignor is behind on rent or in violation
of other terms of his or her leasehold. If the assignor is behind and back
payments or penalties are due, the assignor must bring their lease hold current
before such an assignment can occur.

Be It Further Resolved that the City Council reviewed a Staff report on March
10, 2014 and is herein made part of the City Council's ground lease extension
policy

1 DATED: March 10, 2014

3
4 Bridget Powers, Mayor

4 ATTEST:

5
6 Stephanie L. Snyder, City Clerk

7
8 I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify
9 that the foregoing resolution was duly passed at a regular meeting of the City
10 Council of the City of Auburn held on the 10th day of March, 2014 by the
11 following vote on roll call:

11 Ayes:

12 Noes:

13 Absent:

14 Stephanie L. Snyder, City Clerk